Supreme Court, U.S.
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No. 99-1129

In The

Supreme Court of the United States

ABDUL AZIZ,

Petitioner,

v.

BOARD OF DIRECTORS of the STATE COLLEGE SYSTEM of WEST VIRGINIA,

Respondent.

On Petition For A Writ Of Certiorari To The United States District Court For The Southern District Of West Virginia At Bluefield

BRIEF IN OPPOSITION

CHARLES R. BAILEY
Counsel of Record
BAILEY & WYANT
P.O. Box 3710
Charleston, WV 25337-3710
(304) 345-4222

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Fourth Circuit properly affirmed the United States District Court for the Southern District of West Virginia's grant of summary judgment in favor of the Respondent, the Board of Directors of the State College System of West Virginia?

2. Whether Petitioner's claim pursuant to the Age Discrimination in Employment Act of 1976, 81 Stat. 602, as amended, 29 U.S.C. 621 *et seq.* (1994 ed. and Supp. III), should have been dismissed by the United States District Court for the Southern District of West Virginia for a lack of subject matter jurisdiction pursuant to the sovereign immunity conferred by Eleventh Amendment of the United States Constitution?

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JURISDICTION

There is no compelling reason for this Court to grant a Writ of Certiorari to consider the decision of the United States Court of Appeals for the Fourth Circuit to affirm the United States District Court for the Southern District of West Virginia's grant of summary judgment to Respondent, the Board of Directors of the State College System of West Virginia.

STATEMENT OF THE CASE: PROCEDURAL HISTORY

In 1995, the Petitioner, Abdul Aziz, applied for a position as an assistant/associate professor of mechanical engineering at Bluefield State College ("the College"), located in Bluefield, West Virginia. Another applicant was selected to fill the advertised position. The selected applicant was age forty-eight (48), while the Petitioner was age sixty-three (63). Aziz filed suit in the United States District Court for the Southern District of West Virginia, alleging that Respondent, the Board of Directors of the State College System of West Virginia ("the Board") had violated the Age Discrimination in Employment Act of 1976, 81 Stat. 602, as amended, 29 U.S.C. 621 *et seq.* (1994 ed. and Supp. III) ("ADEA"), by failing to hire him.[1]

[1] As Petitioner points out in his Petition for a Writ of Certiorari, he has filed numerous other unsuccessful civil discrimination lawsuits against colleges across the country. In fact, Petitioner boasted during his deposition that his practice of filing lawsuits is a "very ingenious method that no court will ever be able to stop."

Following discovery, the Board filed a motion for summary judgment arguing that Petitioner had failed to establish a prima facie case of age discrimination, or, in the alternative, that the Board had legitimate non-discriminatory reasons for not hiring Dr. Aziz. The United States District Court for the Southern District of West Virginia at Bluefield granted the Board's motion, finding that the Plaintiff had failed to present any direct evidence of a discriminatory purpose for the Board's hiring decision. The Court also based its judgment upon the fact that the Board articulated legitimate, non-discriminatory reasons for its decision not to hire Petitioner. Aziz filed a "Request for Reconsideration" then an "Addendum to Plaintiff's Request for Reconsideration." The District Court denied the petitioner's motion for reconsideration. Following the disposition of his case in federal court, Petitioner filed a complaint in Mercer County Circuit Court, in Mercer County, West Virginia, making virtually identical allegations. He then filed a petition for appeal to the United States Court of Appeals for the Fourth Circuit, alleging that the District Court had erroneously granted the Board's motion for summary judgment. He also filed what he entitled a "Very Important Addendum to His Appeal." In a per curiam, unpublished opinion, the Fourth Circuit Court of Appeals affirmed the decision of the District Court.

ARGUMENT FOR DENYING THE WRIT

A. The District Court applied well-established legal principles governing the ADEA to grant summary judgment for the Board; the United States Court of Appeals properly affirmed the decision.

The Petition for a Writ of Certiorari[2] ("Petition") is essentially a stream-of-consciousness manifesto delineating Petitioner's personal opinions about the status of this country's legal system. Pet. at 2-26. The Petition presents no legitimate reason for this court to re-evaluate the decision of the Fourth Circuit Court of Appeals to affirm the District Court's grant of summary judgment. The District Court evaluated the facts of the petitioner's claims, then engaged in a solid legal analysis based upon well-established law to determine that summary judgment was appropriate. Pet. at App. 5a-10a. The Fourth Circuit Court of Appeals affirmed the reasoning of the district court. Pet. at App. 2a. There are simply no legitimate reasons for this Court to grant Petitioner a writ of certiorari. *See* SUP. CT. R. 10(a) (The Supreme Court considers granting writ when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or

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[2] Throughout this brief, "Pet." refers to the Petition for Writ of Certiori and "App." refers to the Appendix to this Petition.

sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.").

The legal analysis of the District Court was based upon well-established principles of ADEA statutory construction. The fourth circuit evaluates age discrimination claims under the ADEA in the same means as other circuits. The law of the fourth circuit, which has been adopted by every circuit and validated by this Court, is that ADEA claims are subject to Rule 56 disposition if (1) the plaintiff fails to establish a *prima facie* case of age discrimination, or (2) the plaintiff fails to rebut the defendant's articulated legitimate nondiscriminatory reason for its actions.

> While the proof scheme in age discrimination cases can make the summary judgment analysis somewhat trickier, a defendant can still obtain summary judgment in one of two ways. He can demonstrate that the plaintiff's proffered evidence fails to establish a *prima facie* case, or, if it does, the defendant can present evidence that provides a legitimate nondiscriminatory explanation about which the plaintiff does not create a factual dispute.

Mitchell v. Data General Corp., 12 F.3d 1310, 1316 (4th Cir. 1993); *see also O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 116 S.Ct. 1307 (1996) (applying the *McDonnell Douglas Corp. v. Green* four-element test (411 U.S. 792, 802, 93 S.Ct. 1817 (1973)) as a guideline for establishing a prima facie case of discrimination under the ADEA).

Despite the fact that the *prima facie* scheme of establishing discrimination was developed as a means to aid

plaintiffs who are unable to offer direct proof of discriminatory motivations, (*see generally McDonnell Douglas*, (411 U.S. 792, 802, 93 S.Ct. 1817)), Petitioner Aziz informed the District Court that he refused to proceed under the indirect method of proof and that he would establish his case via direct proof. Pet. at App. 7a. Accordingly, the District Court evaluated his claims using the direct method of proof as well as the more lenient *prima facie* method of proof. Pet. at App. 7a. The Court examined the parties' discovery results, including the plaintiff's deposition testimony and interrogatory responses, and concluded that the plaintiff had failed to offer any direct or indirect proof that the College was motivated by any discriminatory animus. Pet. at App. 9a. Rather, the Court found that Petitioner relied upon his own, unsubstantiated opinion that he had been the victim of age discrimination. Pet. at App. 9a.

Although the Court found no evidence of discriminatory animus, it nevertheless continued its analysis of Appellant's allegation by reviewing the Board's articulated reasons for failing to hire the Petitioner. Pet. at App. 8a. The District Court noted that the Board offered evidence that the selectee was better qualified than the petitioner for the following reasons: "(1) the selectee was a registered professional engineer; plaintiff was not, (2) selectee had relevant experience in mining and machine tools technology; plaintiff did not, (3) selectee resided and worked in the region for fifteen years; plaintiff had only been in West Virginia once prior to his deposition, and, (4) selectee had previously been employed by the college as an adjunct professor; plaintiff had not." Pet. at App. 8a-9a. The Court declined to scrutinize the Board's

particular hiring criteria but found that the Board's articulated reasons were legitimate and non-discriminatory. Pet. at App. 9a (citing *EEOC v. Clay Printing Co.*, 955 F.2d 936, 946 (4th Cir. 1992) for the proposition that a court is not in a position to evaluate the wisdom of an employer's criteria). Finally, the Court granted summary judgment for the Board based upon the lack of any direct or indirect proof of discriminatory animus, coupled with the legitimate, non-discriminatory explanations offered by the Board. Pet. at App. 9a.

In sum, the District Court engaged in a routine legal analysis based upon well-established legal principles. Despite the petitioner's optimistic urging that this Court alter the Federal Rules of Civil Procedure to disallow summary judgments, the fact is that the United States District Court for the Southern District of West Virginia carefully and properly performed the required legal analysis. Pet. at App. 4a-10a. The United States Court of Appeals for the Fourth Circuit evaluated and affirmed the District Court's decision. Pet. at App. 2a. There was nothing unusual or controversial about these decisions, and there is no need for this Court to re-evaluate them.

B. Even assuming, arguendo, that the lower courts erred in granting and affirming summary judgment for the Board, the petitioner's contentions are moot because the Eleventh Amendment is an absolute bar to the Petitioner's ADEA claim.

The petitioner filed suit based solely upon the ADEA. The respondent, the Board of Directors of the State of West Virginia Board is a state agency. This Court recently

held that the Eleventh Amendment of the United States Constitution immunizes a state from an ADEA suit filed in federal court. *Kimel et al. v. Florida Board of Regents*, No. 98-791 (Jan. 11, 2000). Although the Fourth Circuit has consistently held that the Eleventh Amendment confers immunity upon a state agency from suit filed by an individual in federal court, this Court recently clarified the Eleventh Amendment's application to claims brought under the ADEA. *See e.g., Roach v. West Virginia R.J.A.*, 74 F.3d 46, 50 (4th Cir. 1996) (remanding to state court a suit against the West Virginia Regional Jail and Correctional Facility based upon a lack of subject matter jurisdiction under the Eleventh Amendment); *Westinghouse v. West Virginia Department of Highways*, 845 F.2d 468, 469 (4th Cir. 1988) (affirming district court's dismissal of the West Virginia Department of Highways pursuant to Eleventh Amendment immunity). In *Kimel*, this Court held that the ADEA does not abrogate the States' Eleventh Amendment immunity. *Kimel*, No. 98-791. Accordingly, this Court affirmed the dismissal of several state entities based upon sovereign immunity from liability under the Eleventh Amendment. *Id.*

The Fourth Circuit Court of Appeals has, in a series of cases, clarified the interaction of Eleventh Amendment immunity and federal subject matter jurisdiction. Although the two issues are distinct, they are interrelated in that Eleventh Amendment immunity acts as a jurisdictional bar. The United States Court of Appeals for the Fourth Circuit in *Biggs v. Meadows* adopted the majority view that jurisdiction and immunity issues are distinct. *See Biggs v. Meadows*, 66 F.3d 56, 60 (4th Cir. 1995). The Court explained that while Congress has the power to

limit a state's Eleventh Amendment immunity, Congress has no power to alter a federal court's subject matter jurisdiction. *Id.* at 61. "Eleventh Amendment immunity is not truly a limit on the subject matter jurisdiction of federal courts, but a block on the exercise of that jurisdiction." The United States District Court for the Fourth Circuit has continued to use this analysis in examining Eleventh Amendment immunity. In *Suarez Corp. Industries v. McGraw*, the Court stated that the eleventh amendment is an absolute immunity which demands a federal court's withdrawal of jurisdiction. *Suarez Corp. Industries v. McGraw*, 125 F.3d 222, 227 (4th Cir. 1997); *see also Roach v. West Virginia R.J.A.*, 74 F.3d 46, 48 (4th Cir. 1996). Thus, once the Eleventh Amendment's immunity provisions are found applicable to a case, a federal court can no longer exercise jurisdiction over the immune defendants. In fact, the issue of Eleventh Amendment immunity is similar enough to subject matter jurisdiction that it, like subject matter jurisdiction, can be raised for the first time on appeal. *See Suarez Corp. Industries v. McGraw*, 125 F.3d 222, 227 (4th Cir. 1997) ("because of its jurisdictional nature, a court ought to consider the issue of Eleventh Amendment immunity at any time, even *sue sponte*").

If this Court's holding in *Kimel* is applicable to Petitioner's ADEA claim, then the petition for a writ of certiorari is moot. Assuming the District Court (and the Court of Appeals) was barred from asserting subject matter jurisdiction over the petitioner's ADEA claim, then the case should have been dismissed based upon sovereign immunity *before* the issue of summary judgment was determined. In short, whether this case was properly disposed of pursuant to a summary judgment motion or

by dismissal based upon sovereign immunity, the Petitioner's claims are no longer viable.

CONCLUSION

The United States Court of Appeals for the Fourth Circuit affirmed the decision of the United States District Court for the Southern District of West Virginia at Bluefield because the District Court properly granted summary judgment using a routine legal analysis based upon established legal principles. There are no contested, disputed, or controversial issues worthy of this Court's review. Even assuming, *arguendo*, that the lower courts erred in granting and affirming summary judgment for the Board, the petitioner's contentions are moot because the Eleventh Amendment is an absolute bar to the Petitioner's ADEA claim. In either case, the Petition for a Writ of Certiori should be denied.

Respectfully submitted,

CHARLES R. BAILEY
Counsel of Record
BAILEY & WYANT
P.O. Box 3710
Charleston, WV 25337-3710
(304) 345-4222